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Rejecting *the order of public reason*

Richard Arneson

Gerald Gaus's latest book achieves a remarkable, definitive development of the public reason project whose roots can be traced back to Locke and Kant and which had already attained its full expression in the later writing of John Rawls—or so we had thought! In fact Gaus takes a long step beyond Rawls.[1] In my view we should have a raised eyebrows response to the public reason project, but this does not gainsay Gaus's achievement in rigorously working out its implications. The book develops an account of the justified imposition of moral constraints and, following that, of justified political arrangements. These comments focus on the former.

1 Summary

Like any genuinely original work, this one admits of quick summary. In everyday life, people make moral demands on each other, and claim a special authority in making these demands. Gaus's project is to characterize the conditions that must be met if the claim to authority present in ordinary moral demands is to be vindicated. In the absence of this vindication, ordinary moral practice would be revealed to be authoritarian in a pejorative sense; "our moral practices" would just consist in some people pushing other people around.

Pressing a moral demand on someone carries at least implicitly a threat and a warning, because the demands of morality are enforced at least by informal social sanctions (and some bits of it are also incorporated in legal requirements). People

[1] Gaus (2011). Page numbers enclosed in parentheses of the text refer to this book. For John Rawls on public reason, see especially his *A Theory of Justice* (1999); also Rawls (1996).

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internalize the going social morality, so they become disposed to react with resentment and indignation against those who fail to conform to moral requirements, to punish these rule violators, and to experience guilt when they themselves are rule violators. Making demands on others in the name of a social morality we accept, we presuppose that the person on whom we make demands has reasons to comply—not merely reasons of prudence to avoid the sanctions that noncompliance can trigger, but moral reasons, reasons having to due with due consideration for the interests of others that find a secure footing in that person's own evaluative beliefs.

In other words, moral demands addressed to individuals presume that what is demanded can be justified from the evaluative standpoint of each and every person who is addressed. In making a moral demand of other persons, one invokes a community of equals. The background presupposition of our ordinary moral practice is that those participating in this practice are free and equal persons, each free to interpret moral requirements according to her own reason and equally entitled to this status and equally entitled not to be expected to conform to moral demands that are not justifiable to her.

Gaus's book comprises a long meditation on the implications of the ideas just sketched. On one side, he develops a sophisticated view of the social practice of morality—what functions it serves, how it is structured to fulfill these functions. From the other side, he develops the best statement we have so far as to what conditions must be fulfilled if our social morality is to conform to the public reason standard just described. According to Gaus, this public reason idea is not an optional standard we could jettison if it made us uncomfortable or cramped our moral style. Nor is it an alien imposition; the standard is presupposed by our most basic attitudes revealed by basic features of our moral practices.

For a moral demand to be justifiable to an individual, it does not suffice that there are reasons that justify the demand. Such reasons might be entirely inaccessible to the person. Reasons that are as it were reasons in outer space are of no interest to Gaus's project. A moral demand or set of moral demands is justifiable to a person just in case she has (possesses) good and sufficient reasons to accept it, and this means that starting from her current beliefs, by doing a respectable or good enough amount of good reasoning she would have good and sufficient reason to accept it. Gaus puts the thought in these terms: "Alf has (provisionally) a sufficient reason R if and only if a "respectable amount" of good reasoning by Alf would conclude that R is an undefeated reason (to act or believe)" (p. 250).

To serve the essential functions of coordinating behavior and facilitating social cooperation, a social morality must consist of rules for conduct that are fairly determinate in their implications, as opposed to principles whose interpretation is up for grabs and whose implications for conduct are not transparent. To accept a rule is to accept it as opposed to some set of alternatives. There is a relevant baseline here: regarding some proposed rules or sets of rules, an individual might prefer, from her own evaluative standpoint, that there be no moral rule at all in this area internalized, accepted, and enforced in her society.

If we are trying to determine what sets of rules are justifiable to a given set of people we should imagine them choosing rules regulating some area of concern one rule at a time. Choosing between whole sets of rules is computationally too

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cumbersome and complex. However, Gaus allows that rules are to be evaluated as package deals to some extent. Here we might seem to be left chasing our tails, unable to proceed. Some narrowing down of the options to be considered comes about via uncontroversial features of what is involved in having a moral code: a rule that would just flatly favor me and those near and dear to me over others and is advanced by me on that basis is not a candidate moral rule. Still, the task might seem too complex. Gaus suggests that the task is reasonably simplified by the fact that there are some basic and very important matters on which people can be expected to agree, at least at a level of not too indeterminate principle; agreement on these matters limits the set of alternatives that are on the table and merit consideration at further levels of deliberation. In carrying out the task, we are to imagine what "Members of the Public" would accept. Each Member of the Public is an ideal advisor of one of the actual members of society; each Member of the Public evaluates proposed rules and social moralities according to her corresponding actual member's evaluative beliefs corrected by a respectable amount of good reasoning.

The end result of this process will be a plurality of sets of moral rules, each of which is rated by each Member of the Public as superior from her perspective than having no social morality constraint in this particular are of life at all. There will be several such undefeated sets of rules, not a singleton set, given the evaluative diversity that exists and that would persist through realistic reasoned correction of belief. Each Member has an ordering over this set of sets, but these will differ. We can sensibly whittle down this set of possibly acceptable social moralities by eliminating those that are dominated for each Member by some other possible morality. Eliminating these Pareto-inferior proposals, we end up with the *optimal eligible set* of candidate social moralities. Each of the entries on this list is better than nothing from everyone's perspective and no entry dominates the others from everyone's perspective.

At this point Gaus has a simple, elegant suggestion that he draws from his discussion of the nature and point of having a social morality. We should distinguish a hypothetical set of moral rules and a set of moral rules that is actually generally accepted, reliably enforced, and generally followed by the actual members of some society. A social morality serves its function of promoting coordination of conduct and facilitating social cooperation only if it is generally accepted, enforced, and followed. Since there are advantages to coordinating with others, and to going along with whatever norms others are following, if we happen to have a social morality in place that falls within the optimal eligible set, it is very likely that each person, from her own evaluative perspective, will have good and sufficient reasons to follow the rules laid down, the morality that is in place and established, regardless of where it falls in her preference ordering over candidate social moralities. Given the rule-acceptance and rule-following of others, each has reason to accept and follow.

We are now in a position to appreciate Gaus's rationale for his "Basic Principle of Public Justification": "A moral imperative "ϕ!" in Context C, based on rule L, is an authoritative requirement of social morality only if each normal moral agent has sufficient reasons to (a) internalize rule L, (b) hold that L requires ϕ-type acts in circumstances C and (c) moral agents generally conform to L" (p. 263).

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The public reason account of political authority and political legitimacy that Gaus develops builds on the account of social morality just described. We need not suppose that in actual societies social morality is established first and a political society added later. Both may evolve together. But in the order of justification, according to Gaus, the state has the function of enforcing and stabilizing the uniquely justified going social morality if it exists.

2 Assessment

The main problem with Gaus's version of public reason theory does not turn on subtle features or idiosyncrasies in Gaus's particular version of the view. The problem is generic, and applies to all recognizable versions of the view.

To see the issue, consider the decision problem faced by someone who lives in a society that has established and now maintains a social morality that is within the optimal eligible set. This social morality now dictates that Allessandra should do X. However, Allessandra judges that according to her own moral views, refraining from doing X would be the morally superior course of action. In arriving at this decision, Allessandra gives proper weight, from her own standpoint, to the indirect moral costs of her proposed course that would stem from such possibilities as that others will witness her violation of the going morality and become less firmly disposed to conform to it across the board. However, Allessandra has good reason to believe her judgment in this matter, though fallible, is superior to the judgment of those who uphold the conventional morality on this issue. So why should Allessandra defer to what is likely a wrong view just because it lies within the optimal eligible set?

In a diverse society, where people stably disagree about what is right and fair, all benefit, each from her own ethical perspective, from coordination on a social morality, as opposed to the outcome that would result from moral anarchy—everyone acting according to her own moral views, with no shared moral standards.

However, in the hypothetical we are considering, Allessandra has already given this consideration its due weight, and she nevertheless calculates that violating the social morality rule that applies to her here and now is the thing to do. So she violates the going rule, and is likely right to do so.

So far there is no challenge to Gaus's position. He does not insist that every Member of the Public must give such overarching moral weight to the imperative of conforming to the going social morality when it lies within the optimal eligible set that rule violations always turn out to be wrong from the individual's standpoint.

But suppose there are many Allessandras, and their individual acts of rule breaking lead to deterioration of the sway over people of the going social morality. Perhaps some new equilibrium emerges that enforces a set of rules that lies outside the optimal eligible set, but closer to Allessandra's preferred position, and superior from the standpoint of the reasons there are. If so, the shift is bad from Gaus's standpoint. I side with the Allessandras. The Gaus optimal eligible set lacks moral supporting reasons that should give it a claim on our allegiance.

Consider a person who is being treated wrongfully but in a way that does not register as immoral according to the accepted current morality. Let us suppose that this

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accepted current morality falls within the optimal eligible set. Smith is being bashed by Jones, and in the circumstance, what Jones is doing is morally wrong, according to the reasons there are, and according to the best version of morality that is reachable in our epistemic circumstances, with the resources our culture makes available to us. Nonetheless this best morality lies outside the optimal eligible set. From some semi-reasonable or reasonable enough standpoint occupied by some member of society, say Betty, the moral principle that grounds the rule that declares the bashing of Smith to be morally wrong is unacceptable. Rather than accept that rule as part of morality, Betty prefers that this part of social life not be regulated by any moral rule and that instead everyone be left free to act according to her own ethical beliefs.

But so what? The mere fact that from some semi-reasonable perspective imposing a moral rule would be unacceptable does not suffice to show that imposing the rule would be unacceptable. Imposing a moral rule on people that lies outside the optimal eligible set is inconsistent with regarding people as free and equal, as Gaus understands these terms. The conclusion to draw here is that people should not be regarded as free and equal according to Gaus's conceptions of these terms.

My claim is that it is not wrongfully disrespectful to a person to demand that she conform to moral demands that she does not accept but would accept if she were fully rational, because the rule is then genuinely acceptable. "Rational" here incorporates full use of practical reasoning powers; a rational person correctly registers and interprets the reasons there are. The nub of the objection to Gaus's view is that his standard of reasonableness, meeting which gives one a veto over candidate moral rules, is too low. On this account, one only has reason to accept an ethical claim if one would accept this claim if one were to engage in a respectable amount of good reasoning regarding one's current beliefs and attitudes.

We can determine upper and lower limits to the amount of good reasoning that is adequate to qualify one's view as that of a Member of the Public. The upper bound is set by the constraint that "the practice of morality is not an elite practice," rather one "in which all adults who have grasped the Principle of Moral Autonomy are competent" (p. 254). The Principle of Moral Autonomy stipulates that "A moral prescription is appropriately addressed to Betty only if she is capable of caring for a moral rule even when it does not promote her wants, ends, or goals and she has sufficient reasons to endorse the relevant rule" (p. 222). The lower bound of reasonableness is implicit in our ordinary moral practices of making demands on one another, expecting compliance, resenting noncompliance, and continuing to press demands in the face of initial resistance.

In response, one should note that there is no good theoretical or metaphysical or practical reason to suppose that practical reason must be simple. Note that there is no comparable sensible bar on the amount of good reasoning that might be required to arrive at well founded empirical beliefs. Nature might be hard to read. Morality might be hard also.

There are several replies that Gaus might deploy to fend off this line of thought. One is to appeal to the social nature of morality as a human practice. Given its functions and the role it plays in our lives, it just cannot be esoteric knowledge. Understanding morality is something a normal competent member of society is expected to master, and the mastery is deployed in ordinary interactions. Knowledge

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of morality has to be available to people if morality is to fulfill its function of coordinating people's behavior and facilitating cooperative interaction in ways that make the world better form everyone's perspective.

I do not see that this view about the necessarily nonesoteric character of ethics is any less implausible than a comparable claim about any other craft. Basket-making and engineering play important roles in our lives and social practices, but this does not constrain the possible difficulty of answers to questions about the best ways to make baskets and build bridges. Moreover, whatever we make of such phenomena, the ordinary practice of morality does include some people claiming to affirm a moral demand that all should obey, even in the teeth of stable denial by others, including clever and sophisticated others, that the claimed moral demand has any merit at all.

Gaus might appeal to the plausibility of the root idea that "A moral order of free persons rejects appeals to the natural authority of some people's private judgments over those of others. A social morality that allows the (self-appointed?) "enlightened" to make moral demands on others that as free and equal moral persons those others cannot see reasons to acknowledge is *authoritarian*" (p. 16). This is a salutary warning. People often make claims to special moral wisdom and authority and if they command sufficient military or political force, are able to impose these demands on the rest of us, forcing us to comply with their vision of what morality requires. This usually just amounts to some people pushing other people around.

Usually so, but not always or necessarily so. Writing about just war theory, Elizabeth Anscombe once observed, "Just as an individual will constantly think himself in the right, whatever he does, and yet there is still such a thing as being in the right, so nations will constantly wrongly think themselves to be in the right—and yet there is still such a thing as their being in the right."[2] Just so.

Gaus might hold that moral reasons to which an individual has no epistemic access are simply inert for that individual, powerless to affect her reasoning about what she owes other people and they owe her. Nonetheless there can be a connection between moral reasons to which I have no epistemic access and my will. Trying to do the right thing, I must ultimately follow my own subjective beliefs about what that is. But in choosing to act on reasons as I see them I might will that I do what is really right, not what I happen now to think right. In that case, if I am Jones pounding Smith, and this is wrong, then my deepest will is not to be doing what I am doing, and when you stop me, you are forcing me to be free, forcing me to obey my deepest will.[3] Of course my will may be otherwise disposed. I may will to keep pounding Smith (which I now believe to be morally permissible) come what may, whether this is ultimately a violation of Smith's moral rights or not. Or I may not have noticed this possibility and may have no latent disposition of the will regarding it. In the former case, when my strongest will is to conform to right principles whatever they may be, coercing me does not violate my freedom and autonomy, and in the later scenarios, my freedom and autonomy do not seem so precious. They should surely yield to Smith's moral entitlements.

[2] Anscombe (1981, p. 52).

[3] Cf. Rousseau (1762).

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So far I have simply pointed to the possibility that imposing on someone a moral demand that lies outside the optimal eligible set might be imposing on the person a demand that is in fact best supported by the reasons there are, and all of this might be known by the person who imposes the demands, even though she is a fallible reasoner like everyone else. The imposer would then be justified in making the moral demand and might well be justified in forcing even those who reject its authority to comply with it—call this authoritarianism if you like.

Gaus might respond that I have not engaged with the implications of moral pluralism. Suppose the reasons there are point not to one unique set of moral principles but to a great number of alternative sets of principles, none better nor worse than the others. Even if *per impossible* we could somehow single out the members of society who have stumbled on one of these undominated moral positions, we would still face the problem that we need an agreed social morality, not the moral anarchy of each person following her own private conscience in dealings with others. To fulfill its valuable social functions a social morality must be accepted by the bulk of people in society and generally obeyed. The set, quite possibly a huge set, of ideally coherent and thus full rational moral positions, could not fulfill the role of a social morality. We still have the problem, how to establish and sustain a social morality and reap its benefits while treating all (fully rational) members of society as free and equal.

Assume pluralism as just described. There are moral doctrines that are at the end of the day, with all the reasons there are properly weighed, neither better nor worse than others. My description of this state of affairs would be: the moral truth is disjunctive. Either a or B or C or…..N is correct. If this is true, I do not see how a society could be faulted for enforcing any of A or B or C or….N. There is still no overarching requirement of reason to impose no moral demands on reasonable enough people that they reject. Suppose A is enforced and semi-reasonable Ben insists that enforcing A is wrong because he takes B to be uniquely correct. In this case, he is just wrong. Enforcing A on Ben is not wrongfully disrespectful to him, given that if her were fully rational, he would see that A is just as acceptable as B. The same holds if we treat the relevant of standard of reason as what a fully rational person, with the epistemic resources available at this time, (which might be superseded by resources that further history or cultural development will disclose) would endorse.

All of this leaves a pivotal Gaussian point unmoved. There is all the difference in the world between an abstract set of moral principles, let us assume this set is correct, and a functioning social morality, which can do its job only if actually internalized by people and actually generally followed by most of them. A mere moral doctrine that you and I take to be correct lacks the normativity that actual establishment confers.

This is correct and important. Abstract moral principles are no substitute for an established set of rules that is able to coordinate people's behavior in mutually beneficial ways.[4] So we should strive to put in place a social morality that will

[4] On the need for distinct and separate levels of moral thinking, (see Hare 1981). Hare speaks of intuitive and critical thinking. I would suppose the levels include one of fundamental moral principles, one of public morality, one of informal social rules, another of enforced legal rules and policies. Hare writes

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function in society so that correct moral principles (or the principles that our best attainable epistemic standpoint singles out) are achieved as fully as possible. We should assess the extant social morality, the one actually ruling our society, by its shortfall from this ideal, and give it greater or lesser allegiance depending on the amount of shortfall. What we should do when the version of social morality that is established deviates from what ideal morality dictates we ought to do in this situation is a second-best issue to be settled by ideal moral principles. This second-best calculation takes into account the moral cost of giving scandal and encouraging others to lessened disposition to conform to the extant moral rules and so on. But the fact that an established set of moral rules is generally followed is a member of the optimal eligible set and so morally legitimate by the public reason ideal (acceptable to every Member of the Public from each member's evaluative perspective is strictly speaking a "don't care," not any sort of reason for conformity to this social morality in place.

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Footnote 4 continued

from a consequentialist standpoint, but the point he is making is not sectarian: both consequentialists and nonconseqentialists will need to distinguish various levels of moral thinking.

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